

STATE OF MAINE
SUPREME JUDICIAL COURT

AMENDMENTS TO THE
MAINE RULES OF CIVIL PROCEDURE
[FORECLOSURE DIVERSION PROGRAM]

2009 Me. Rules 18

Effective: July 20, 2009

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are hereby adopted to be effective on the date indicated above. The specific rules amendments appear below. To aid in understanding of each amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 55(a) of the Maine Rules of Civil Procedure is amended to read as follows:

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(1) Foreclosure Actions. No default or default judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of the law and these rules have been strictly performed, and (ii) the plaintiff has properly certified proof of ownership of the mortgage note and

produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage.

Advisory Note

This amendment to Rule 55 is designed to assure that, prior to entry of any default in a foreclosure action, the trial court reviews the record and determines that, as required by law, the notice and service requirements of law have been complied with.

2. Rule 56 of the Maine Rules of Civil Procedure is amended to add subdivision (j) to read as follows:

(j) Foreclosure Actions. No summary judgment shall be entered in a foreclosure action filed pursuant to Title 14, Chapter 713 of the Maine Revised Statutes except after review by the court and determination that (i) the service and notice requirements of the law and these rules have been strictly performed; (ii) the plaintiff has properly certified proof of ownership of the mortgage note and produced evidence of the mortgage note, the mortgage, and all assignments and endorsements of the mortgage note and the mortgage; and (iii) mediation, when required, has been completed or has been waived or the defendant, after proper service and notice, has failed to appear or respond and has been defaulted or is subject to default. In actions in which mediation is mandatory, has not been waived, and the defendant has appeared, the defendant's opposition pursuant to

Rule 56(c) to a motion for summary judgment shall not be due any sooner than ten (10) days following the filing of the mediator's report.

Advisory Note

This amendment to Rule 56 is designed to assure that, prior to entry of any summary judgment in a foreclosure action, the trial court reviews the record and determines that, as required by law, the notice and service requirements of law have been complied with and any available mediation has been completed or has been waived. In addition, when mediation is mandatory and the defendant has appeared but not waived mediation, this amendment sets the deadline for opposing a motion for summary judgment ten days following the filing of the mediator's report. For some counties, foreclosure mediation may not be available or required until January 1, 2010.

3. These amendments shall be effective July 20, 2009, except where otherwise noted.

Dated: July __, 2009

FOR THE COURT¹

LEIGH I. SAUFLEY
Chief Justice

ROBERT W. CLIFFORD
DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.